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CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1932.

No. 653.

UNITED STATES OF AMERICA, *Appellant*,

vs.

JOHN G. DARBY, *Appellee*.

On Appeal from the District Court of the United States for the District of Maryland.

APPELLEE'S BRIEF.

LUCIEN H. MERCIER,
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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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JURISDICTION.

MOTION TO DISMISS OR AFFIRM.

Appellee insists on his Motion to Dismiss or affirm. The Motion was based on the ground, *inter alia*, that what was involved below was the sufficiency of the indictment, and the interpretation of decided cases, and not the construction of the statute. That these were the questions there can be no doubt, as, in his opinion, the District Judge says—

> "The single question before the Court is whether the following allegations as set forth in the indictment * * * are sufficient to meet the requirements of the statute defining the crime of false entry * * *.

> "Defendant * * * is * * * charged * * * solely with the making of false entries which is a separate, concrete offense, and, *if we properly interpret the aforegoing decisions*, is not committed where, as here, the transactions of which he made entries actually occurred and were entered exactly as they occurred."

Does this not answer the Government's affirmance that decision below was concerned with the construction of the Statute? All the District Judge was concerned with was whether the allegations of the indictment were sufficient to make up the crime as these former decisions defined it, not as he thought the statute made it.

Having tested the sufficiency of the indictment, and having found it lacking, this finding cannot be reviewed or disturbed by this Court,

U. S. v. Colgate & Co., 250 U. S. 300;
U. S. v. Yuginovich, 256 U. S. 450;
U. S. v. Winslow, 227 U. S. 202;
U. S. v. Patten, 226 U. S. 525;
U. S. v. Miller, 223 U. S. 599;

leaving no substantial question to be passed on on this appeal.

THE INDICTMENT.

The indictment recites the possession by the bank of certain notes received and accepted by the bank in regular discount transactions; the entry of the transactions in the discount register exactly as they occurred; but charges that these entries, which consisted of a recital of the names appearing on the notes, were false and fraudulent in that the name of one of the makers on said notes was forged, as the defendant well knew.

THE QUESTION.

The question which the Government seeks to present by this appeal is more correctly stated—

> Whether a bank official is guilty of making a false entry when he faithfully enters on the books of a bank exactly as it occurred a note discount transaction made in the regular course of business; knowing when such entry is made that one of the signatures to the note is forged.

ARGUMENT.

Singularly enough, the Government and the appellee both rely on the same decided cases; but both analyze them to reach a different result. The case resolves itself, however, into the question as to what, exactly, is a book entry; and the answer to that question by this Court will determine the soundness, or otherwise, of the base on which the Government rests its case.

The Government's entire argument proceeds on the premise that book of accounts, and the entries therein, are *certifications* and *warranties* of the value and genuineness of the paper which forms the basis of the entries. (Govt.'s brief, pp. 6, 7, 11, 12, etc.) If such is the function of book entries, then there may be some merit to the argument; but not one case can be found, nor a single text book which could or would or does give that kind of an effect to books of accounts or entries therein.

I.

What Are Book Entries.

Books of accounts and book entries are kept and made merely to record transactions occurring during the regular course of business, in order that anyone interested might learn the type of transactions entered into; the number of them; the date of any paper taken, and the names appearing thereon; the time of the paper, etc., etc. Such

books guaranty nothing whatever excepting that on a certain day such and such a transaction took place. (U. S. v. Young, 128 Fed. 114; Billingsley v. U. S., 178 Fed. 653, 663.) Such books are kept merely to record transactions, and not to *represent* whether a certain note or check, the basis of the transaction, is good, bad or forged. These representations as to value and genuineness of signatures are made when the note is discounted. By presenting the note for discount, the person who negotiates it then and there represents and warrants to the bank, *by force of law,* that (1) the signatures and instrument are genuine; and that (2) the party negotiating it has no knowledge of any fact which would impair its validity (Negotiable Instruments Act).

But there is and can be no such warranty or representation in making an entry in the books of the bank showing that the bank paid out its money to discount that particular note. The entry asserts nothing whatever excepting that the transaction took place.

It requires no great argument to demonstrate this—for instance, in 9 C. J. 138, the term "Bookkeeping" is defined to be

> "The art of *recording,* in a systematic manner the *transactions* of merchants, traders and other persons engaged in pursuits connected with money."

And, to the same effect are Bouvier's, and Black's Law Dictionaries, and other dictionaries.

Again, considering the matter from the standpoint of evidence, book entries are received in evidence only as proof that there was or was not such a transaction as claimed, such an item or debit or credit; but cannot be received in evidence to show matters outside of that, such as the purpose of the transaction, the delivery of goods, or any other collateral matter (22 C. J. 877). The reason being that the entry merely asserts that the transaction

took place, and not its validity, or the lack of fraud. Such book entries are *prima facie* evidence and are assertions that the transactions recorded therein actually took place, and nothing more. (22 C. J. 971.)

Again, a witness in testifying may refresh his recollection as to whether a transaction took place, and the time, etc., by the entries in his book. (40 CYC 2454); but his testimony does not by that fact prove or disprove the fraud that may have entered into the transaction. His testimony goes only to prove from the books that the transaction took place.

In the opinion of appellee, all of the decided cases on the subject, which includes those cited by the Government in its brief, clearly recognize the function of books of accounts, and book entries.

Thus, the District Judge in the instant case says:

> "The records of the bank are not intended to furnish the history or the origin of the paper actually passing through the bank, whether received in good or bad faith, whether valuable or worthless for any reason." (R. 19)

In *U. S. v. Young*, 128 Fed. 114, the Court said, speaking of the purpose of the Statute involved herein:

> "Another dominant purpose was, by enforcing true entries, to spread upon the books of the bank accurate statements of things done by the bank officers, to the end that bank examiners might be better enabled thereby to trace and determine accurately, day by day, the actual condition and conduct of the business of the bank. * * * The cashier's books are not intended to furnish, and are not kept to show, the history or the origin of paper taken by the cashier, whether received in good or bad faith, or 'worthless and fraudulent'. * * *
>
> "The cashier, by including the item here in his 'cash items' did not declare or represent that the check upon

> which the item was based was good or supported by honest consideration. The entry makes no representation whatever as to that. The legal effect of the entry is but a written representation to whom it may concern that the cashier, in an actual transaction, had received the check, and that the amount stated was the basis. * * * The truth of what the cashier actually did with the bank's cash as to this check, and statement he made about the cash in the entry on the books of the bank, is not altered in any way by the fact that he knew the check was 'worthless and fraudulent'." * * *

Again, in *Coffin v. U. S.*, 156 U. S. 433, this Court said:

> "that an entry would be false, though it faithfully *described* an actual occurrence, unless the transaction which it *represented*," etc. (Italics supplied)

Again, in the later *Coffin* case (162 U. S. 661) the Court said:

> "An entry * * * which *represents* as an actual transaction one which does not and did not exist," etc. (Italics supplied)

Again, in *Morse v. U. S.* (174 Fed. 539), the Circuit Court of Appeals said:

> "The entries in question were false because they stated the existence of transactions which the jury found never took place."

The proposition seems so clear as to make it appear an imposition on this Court to cite any further authorities.

II.

Entering an Actual Transaction Exactly as it Occurred Cannot Be a False Entry.

In the opinion of appellee, all of the decided cases clearly and unequivocally support the above statement of the law;

which includes all of the cases cited and relied upon by the Government in its brief. It is only by snatching a sentence here and there out of an opinion, that these cases can be analyzed in any other way.

A.

THE GOVERNMENT'S SUMMARY.

The summary, page 5, of the brief typifies the entire argument and brings out clearly the error into which the government has allowed itself to be led. The argument is based on the assumption that books of entry, and entries therein certify as to the genuineness of paper. Naturally, the signature of a co-maker of a note is a material part of the note; but, if books of account are kept to record transactions; or to list the notes on hand; how else could the transaction under which the bank's cash was paid out be faithfully and accurately recorded excepting by listing the note exactly as it was discounted. The note was still in the bank, and remained there as part of its assets. The book entry could neither take away from or add to the exact tenor of the note, otherwise the entry would be bound to be false. The entries must correctly represent the transaction, and if it is an itemized entry, as it was in this case, correctly represent the face, date, amount, name of makers, etc., of the note taken in the transaction.

B.

THE ANALOGOUS CASES.

There is no decided case having the exact situation presented by this case; but there are three decided cases where the factual situation was almost identical to that here present.

In the case of *Dow v. U. S.*, 82 Fed. 904, 910, Dow, the president of a defunct national bank was convicted under an indictment charging false entries under Sec. 5209 of the

Revised Statutes. The proof consisted in showing that although he knew that certain checks drawn on and deposited in his bank were worthless because the drawer had not sufficient funds to meet them, he nevertheless caused entries to be made showing the deposits of that day to be the amount actually received plus the worthless checks. The Court charged the jury that:

> "It was his duty to know whether the checks were good or not. So that if you believe from the evidence that he accepted as any part of this amount the false and fictitious checks, and gave credit upon them in this entry upon his books, I say to you that that entry is false and fictitious within the meaning of the law."

Reversing the lower Court, the Circuit Court of Appeals for the Eighth Circuit said:

> "In effect, it was ruled that the reception and crediting to a third party of a check which created an overdraft was the making of a false entry on the books of the bank. * * * Certainly, if an overdraft is made and allowed under circumstances justifying it, it cannot be said that the entry on the books of the bank of the checks constituting the overdraft is a false entry; and, on the other hand, if an overdraft is in fact made and allowed under circumstances which make the transaction a fraud upon the bank, the entry of the transaction just as it occurred is not a false entry. * * * Coffin v. U. S., 156 U. S. 432."

In the case of *U. S. v. Young*, 128 Fed. 114 (D. C.) (approved by the New York Cir. Ct. in *U. S. v. Morse*, 161 Fed. 429, 436; and by the Fourth Circuit, in *Cooper v. U. S.*, 13 Fed. 2nd 16), which is almost the identical case with the instant one, the bank cashier was indicted for false entries, the allegations being that the cashier, who happened to be city treasurer had made an entry in his cash items for a particular day of a check drawn on another bank by himself as city treasurer, and deposited by him

in the bank of which he was cashier; the charge being that when he made said entry, the cashier well knew that the check was worthless, valueless and fraudulent.

In a well reasoned, and most logical opinion, the Court sustained a demurrer to the indictment. The opinion in this case goes into the history and aims of this legislation; and then says:

> "The sole purpose of this provision (false entry) is fully accomplished if the item included in the 'cash items' is truthfully based on any actual transaction with the cashier, which increases or diminishes the cash in his hands. The demand of this provision is that when a check, though 'worthless and fraudulent,' whether knowingly received or not, is received by the cashier, that the amount paid out on account of it, the particular—the detail—on which the item in his cash account is based, shall be truly stated. Obedience to that command, truly making the entry, though the history of the check and the cashier's dealing with it may bring him under the condemnation of other provision, cannot make him a transgressor against this provision.
>
> "If we stop a moment to consider what the 'item' is which must enter into the cash statement, it will be seen at once that the good or bad faith in which the paper is taken, or its value or worthlessness, cannot determine whether the entry of the 'item' as to it, or its inclusion under the aggregate of 'cash items,' is true or false, in the sense of this provision of the statute. One of the meanings of item is, 'an article; single entry; anything which can form part of a detail; the particulars of an account.' The detail, or particular here—the 'item'—is on what account the sum stated has been paid out. This check is the thing which forms part of the detail—the 'item'—which shows what was done with the bank's money as to it. The inclusion in the cash of a perfectly good check drawn on the bank, if that check has not in fact entered into any transaction of the cashier upon which he parted with money of the bank, would constitute a 'false entry,' if included in the 'cash items' with intent to deceive. On the other

hand, knowingly entering or including in the 'cash items' an item based on a 'valueless and fraudulent' check, if it were in fact received in a transaction with the cashier at the time the entry is made, and he paid out the amount of money included in the 'item' on account of it, and truly entered or included the item in his 'cash item,' could not constitute a false entry. It is immaterial here, therefore, whether or not the check was in fact 'worthless and fraudulent.'

* * * * * * * * * *

"The several counts assail the truth of the entry solely on the ground that the amount of one of the items which entered into the aggregate 'cash items' was based on a check or paper which was fraudulent and worthless, and known to be so at the time of the entry. The cashier in that event would be equally bound, as in the case of a good check bona fide received, in stating his transactions upon the books, to make a proper 'cash item' as to such check, irrespective of its being taken in good faith, or knowingly received in bad faith. The several counts do not deny that the truth had been stated in the entry, or that the check upon which the item was based had been received by the cashier in an actual transaction with the bank. The several counts, therefore, resolve themselves into an assertion that the recital truthfully made by the cashier of the fact that he has included in his 'cash items' an item based on a check received by him in an actual transaction with the bank, is converted into a false entry because he knew at the time the entry was made that the check was 'worthless and fraudulent,' etc. The fraud which entered into the consideration or taking of the check by the bank cannot obliterate or recall the fact that such a check was actually taken by the bank in a transaction with the cashier, who truly recited the fact upon the books. It cannot be a false entry to enter upon the books of the bank a correct recital as to the taking of the check and its inclusion as an item in the aggregate 'cash items' of the bank. The truth of what the cashier actually did with the bank's cash as to this check, and statement he made about the cash in the entry on the books of the bank, is not altered in any way by the fact that he knew the

> check was 'worthless and fraudulent.' The entry, as we have seen, involved no assertion as to the value or bona fides of the check. It stated the exact truth of the transaction as it is entered on the cash account. It cannot be a false entry to make a recital on the books of the bank which speaks the truth. Coffin v. U. S., 156 U. S. 446; Id., 162 U. S. 682; Graves v. U. S., 165 U. S. 324. The averments here are quite different from those in the indictment in United States v Britton, 107 U. S. 657. There it was specifically alleged that the item entered, representing cash, etc., 'was not then and there received by said association upon any account, from any source,' as he well knew."

In *Cooper v. U. S.*, 13 Fed. 2nd 16, Circuit Court of Appeals for the Fourth Circuit (1926), the defendants were convicted of misapplying funds and of making false entries in the books of a national bank. Reversing the conviction, the Court said, as to the false entry charge:

> "The false entries charged to have been made in counts 2 and 3 were exact entries of what in fact occurred; that is to say, that on April 27th a note of Sanderson in the amount of $13,500 was discounted on the security or indorsement of Thomas E. Cooper, and the proceeds thereof deposited to the account of Cooper. The trial court was of opinion that this was a violation of the statute, and in effect told the jury that, if Thomas E. Cooper caused the Sanderson note to be discounted and knew the facts to be as William B. Cooper had stated them in his letter of April 1st—that is to say, that it was an accommodation note made by an insolvent—the entry of such a note on the books of the bank as a debt due by the maker and the crediting of the proceeds to Thomas E. Cooper constituted a false entry as charged in the two counts. And the court further charged that, if the purpose in putting the notes in the bank was to make it appear that the direct liability of Thomas E. Cooper was less than it was in fact, this was sufficient to show an intent to deceive the examiner and other officers mentioned in the statute.

"We are constrained to believe, as was said by the Supreme Court in Coffin v. U. S., 156 U. S. 432-463, that:

> 'The language used must have tended to confuse the jury and leave upon their minds the impression that if the transaction represented by the entry actually occurred, but amounted to a misapplication, then its entry exactly as it occurred constituted a false entry; in other words, that an entry would be false, though it faithfully described an actual occurrence, unless the transaction which it represented involved full and fair value for the bank. The thought thus conveyed implied that the truthful entry of a fraudulent transaction constitutes a false entry within the meaning of the statute. We think it is clear that the making of a false entry is a concrete offense which is not committed where the transaction entered actually took place, and is entered exactly as it occurred.'

"See, also, Twining v. U. S., 141 Fed. 41; United States v. Young, 128 F. 111; Dow v. U. S., 82 F. 910; Hayes v. U. S., 169 F. 101.

"Inasmuch as admittedly, the entries made truthfully represented the facts as they actually took place, it follows that the charge of the court in the respects mentioned was error, for which a new trial must be granted."

C.

THE GOVERNMENT'S ANALYSIS OF THE DECIDED CASES IS INCORRECT.

In its brief, the Government admits the existence of the case law as claimed by appellee; but endeavors, by a labored argument, to make distinctions based principally on the *Agnew*, second, *Coffin*, *Warn* and *Morse* cases *infra*. What the Government overlooks, however, is that those cases are clearly entirely different than the instant one. In all those cases, and a host of others, including the

cases other than the above cited by the Government, the defendants *manufactured* paper for the very purpose of sustaining false entries. In these cases, the paper never entered into any actual transaction of the bank, but was merely made up and placed with other papers of the bank to sustain entries showing the occurrence of transactions which never took place, and never existed, or to hide transactions which did exist.

In the instant case, the note containing the alleged forged name of the co-maker was discounted by the bank, and the bank paid money for the note. This was an actual transaction entered into in the regular course of business. The indictment charges the entry of this actual transaction exactly as it took place That a signature to the note was forged cannot take away from or add to the fact that the note was taken in for discount; and an entry being required to record this transaction, the entry of it exactly as it took place cannot by any stretch of the law or imagination constitute a false entry.

In the *Agnew v. U. S.*, case, *supra* (165 U. S. 36), the defendant manufactured a deposit slip showing a credit to his personal account which never existed. This being the fact, it is easy to understand what the Court meant when it approved the charge of the lower court which said, what the government italicizes (brief p. 7)

> "The crime of making false entries * * * includes any entry on the books of the bank which is *intentionally made to represent what is not true or does not exist* * * *.
>
> "*If the statement made upon the deposit slip is false, the entry of it* in the bank *and the books of the bank is false.*" (Italics, the government's.)

The above charge was clearly correct in principle and under the facts of that case. The lower court therein pointed out that the entry of the deposity slip "in the bank" (the words above which appellee has not italicized to more thor-

oughly emphasize them), and in the books of the bank was false.

But it cannot follow that if the entry of a false slip made but to support a transaction which never took place, is false, the entry in a bank's discount register of a note actually discounted, exactly as its tenor imports, is a false entry. The two things do not and cannot logically follow one another, as the government endeavors to have them do.

It is true, as the government contends (brief, p. 10) that the entry of a *sham* or *fictitious* transaction is a false entry; and all of the cases cited to support this statement of the law, do support it. As was pointed out, however, these cases deal with situations, and the very statement of the principle as above so indicates, where paper is forged or manufactured merely to support false entries.

The second *Coffin* case, *supra*, (162 U. S. 664) cannot be used as a basis of argument as the Government does, without giving the full pertinent extracts of this Court's decision. Let us review this entire case. It first came up in 156 U. S. 433—and there this Court laid down the rule as to what was meant by false entries by the Statute, by the following language:

> "Whilst we consider the charges asked were in some respects unsound, yet the exception reserved to the charge actually given by the court was well taken, because therein the questions of misapplication and of false entries are interblended in such a way that it is difficult to understand exactly what was intended. We think the language used must have tended to confuse the jury and leave upon their minds the impression that *if the transaction represented by the entry actually occurred, but amounted to a misapplication, then its entry exactly* as it occurred constituted a 'false entry'; in other words, that an entry would be false, though it faithfully described an actual occurrence, unless the transaction which it represented involved full and fair value for the bank. The thought thus conveyed implied that the truthful entry of a fraudulent transac-

tion constitutes a false entry within the meaning of the statute. We think it is clear that the making of a false entry is a concrete offense which is not committed where the transaction entered actually took place, and is entered exactly as it occurred."

This case was retried in the lower Court, and again came on for review by this Court (162 U. S. 661). The charge of the lower court taken from the bill of exceptions was:

> "'An entry knowingly and purposely made on the books of the bank, with intent to deceive or defraud, as charged, which represents as an actual transaction one which does not and did not exist, or an entry knowingly and purposely made, with intent to deceive and defraud, as charged, which in a material part falsely and untruly represents an actual and existing transaction, would constitute a false entry within the meaning of the statute. If, however, the entry truly represents an actual bona fide transaction, then it would not constitute a false entry. But if the paper was never accepted or discounted by him for the bank, but was simply left with the bank as a mere memorandum and not as a deposit and for the fraudulent purpose of enabling fictitious entries to be made on the books of the bank with the intent to deceive or defraud as charged, such entry on the books of the bank would constitute a false entry.'

"The objection to this portion of the charge is that it assumes that an entry is false unless it represents a transaction entered into in good faith and without fraud. It is contended that this instruction is within the condemnation of this court as expressed in its former opinion (156 U. S. 463). * * * The objection is not meritorious. *The trial court carefully distinguished between an entry based upon an actual discount* of paper and credit predicated therein, and a credit not representing an actual deposit or discount. The expression 'bona fide' was used in the sense of 'real', and but emphasized the word 'actual'. * * *

> "* * * The fact that other notes were substituted for this paper does not necessarily import that the original transaction was an actual one if the *notes were originally given to the bank as a mere pretext to enable the false entry to be made*, and the subsequent renewals were equally unreal and made for a like purpose. * * * Prior to the statement in the bill of exceptions, which we have quoted, the following recital appears: 'It was claimed on behalf of the government, and evidence was by it introduced tending to show, that * * * said paper was not actually discounted by said bank or actually received as a genuine deposit, but was only received as a memorandum deposit to serve for the time being only, for the purpose of giving the Indianapolis Cabinet Company an apparent credit upon the books of the bank, which in fact it did not have, and that said entries represented no actual transactions whatever.' *We think this extract clearly indicates that the charge as given was relevant to the issue.*"

From this case, the Government feels it can make the following argument (brief, p. 11):

> "In the instant case, the transcription into the bank's discount register of the forged name of the comaker or endorser of the particular note in question clearly represented as an actual transaction one which did not exist. Moreover, it appears that each of the notes was actually signed by the appellee and discounted by the bank. Accordingly, the transcription into the register of the forged signature of the comaker or endorser falsely represents an actual transaction between the appellee and the bank."

It is inconceivable to appellee how the above case can support such an argument; but, the fact is that this is the reiterated argument of the Government throughout its brief. The argument is false in its own statement. If, as it is said in the second sentence, the notes were actually discounted by the bank, how can that be reconciled with the statement of the first sentence that the entry "clearly represented as

an actual transaction one which did not exist." And, again, if the bank actually discounted a paper to which one signature was forged, how can it be said, as it is in the closing sentence, that the entry of the transaction "falsely represented an actual transaction."

The *Morse v. U. S.* case, *supra* (174 Fed. 539), also cannot under any possible hypothesis be claimed to support such an argument. The entries in that case were decidedly not those in the instant case. Appellee relies on the quotations from that case as they appear on pages 12 and 13, Government's brief, in support of his own contentions.

The indictment in this case does not allege that the note was forged merely to support an entry (*Cross v. No. Carolina,* 132 U. S. 131); but states that the notes were actually discounted by the bank in regular course of business; and the transaction was entered exactly as it occurred. In said *Cross* case, *supra,* bank officers had been indicted by the State of North Carolina for forging notes, which said notes were forged in order to sustain certain false entries in the books of the bank, a national bank. A plea in abatement was filed, to the effect that inasmuch as the Federal Statutes Sec. 5209, made it a federal offense to make false entries in the books of a national bank, the state had no right to prosecute the officers for the forgery. The Supreme Court affirmed the state court in overruling this contention; but this case is interesting in its statement as to what the Supreme Court felt was necessary in order that a forged note be made the basis of a charge of making false entries. The Court said:

> "If the punishment by the State of the crime of forgery of which the defendants were found guilty, leaves them exposed to punishment by the United States for having made false entries upon the books of the bank of which they were officers, with the intent to deceive the agent appointed by the general government to examine its affairs, it results from the fact that they are amenable to the laws of the United States,

> as well as of the State of North Carolina, and may be subjected to punishment for violating the laws of each government. *The forgery may have been committed in order that the instrument might thereafter become the basis of false entries upon the books of the bank. But that circumstance* cannot defeat the authority of the State."

In the case of *U. S. v. Warn,* 295 Fed. 328, the defendant entered in the books of the bank a forged "dummy" note, which never entered into any transaction of the bank, and on which no loan was ever made, in order to conceal a real transaction by which an excess loan was made to another patron of the bank. Appellee finds no criticism of the quotation from this case as contained in the Government's brief, excepting that it does not go far enough, for, after the language quoted, comes an explanation of what the Court meant, as follows:

> "Here the gist of the charge is that the note, entered as alleged, was a mere dummy, etc., and the whole question of the sufficiency of the charge turns upon the meaning to be attached to the word 'dummy' * * * If, as I take the term 'dummy' here to mean, the Streeter note was a mere sham, a mere make-believe note, and the defendant knew such to be its character, he could not rightfully carry it as a real asset of the bank, and entries purporting to exhibit it as such would be false."

The facts in the *Coffin v. U. S.* case, 162 U. S. 664, are also not quite as the Government states them. In that case, a note had been left with the bank as a mere memorandum; but it was entered on the books as an item of discount.

D.

THE PURPOSE OF THE STATUTE.

The best analysis of the purpose of this statute is contained in the case of *U. S. v. Young, supra* (128 Fed. 114); and it was there said that the first part of the statute having

provided for embezzlement, abstraction and wilful misapplication of the moneys of national banks, and having thereby enacted safeguards for the protection of the banks' funds, no legitimate construction of the Statute could say that Congress by providing against false entries intended to go over the same ground; and further that while under a certain transaction an officer might be guilty of misapplication, nevertheless if the transaction actually occurred and was entered exactly as it occurred, it could not constitute a false entry to correctly record it.

CONCLUSION.

Appellant submits that on the authority of all of the cases cited by the Government, and especially of the analogous *Young* and *Cooper* cases; and on the argument that the entries in the books of a bank are merely for the purpose of showing the actual transactions of a bank, and not in any sense representations, guarantees, or warranties that the paper which the bank discounted is genuine and not forged, worthless or spurious, the excellent opinion, and the ultimate decision of the lower court sustaining the demurrer were correct.

Respectfully,

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